

By: Senator(s) Bryan

To: Finance

SENATE BILL NO. 3036

1 AN ACT TO AMEND SECTIONS 27-7-309, 27-55-13; 27-55-523,  
2 27-59-13, 27-65-33 AND 27-67-17, MISSISSIPPI CODE OF 1972, TO  
3 PROVIDE THAT PERSONS WHO ACCRUE LIABILITY FOR WITHHOLDING TAXES,  
4 MOTOR FUEL TAXES, SALES TAXES AND USE TAXES IN AN AMOUNT IN EXCESS  
5 OF \$10,000.00, SHALL, WITHIN 72 HOURS, PAY THE AMOUNTS FOR WHICH  
6 THEY ARE LIABLE; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 27-7-309, Mississippi Code of 1972, is  
9 amended as follows:

10 27-7-309. (1) (a) Except as otherwise provided in this  
11 subsection, every employer required to deduct and withhold from  
12 wages under this article shall, for each calendar quarter, on or  
13 before the fifteenth day of the month following the close of such  
14 calendar quarter, file a withholding return as prescribed by the  
15 commissioner and pay over to the commissioner the full amount  
16 required to be deducted and withheld from wages by such employer  
17 for the calendar quarter. Provided that the commissioner may, by  
18 regulation, provide that every such employer shall, on or before  
19 the fifteenth day of each month, pay over to the commissioner or a  
20 depository designated by the commissioner, the amount required to  
21 be deducted and withheld by such employer for the preceding month,  
22 if such amount is One Hundred Dollars (\$100.00) or more. Returns  
23 and payments placed in the mail must be postmarked by the due date  
24 in order to be timely filed, except when the due date falls on a  
25 weekend or holiday, returns and payments placed in the mail must  
26 be postmarked by the first working day following the due date in  
27 order to be considered timely filed.

28 (b) Once an employer who is require to deduct and  
29 withhold from wages under this article has deduced and withheld in



30 excess of Ten Thousand Dollars (\$10,000.00), such employer shall,  
31 within seventy-two (72) hours, pay over to the commissioner or a  
32 depository designated by the commissioner, all amounts he has  
33 deducted and withheld. Such payments shall be made in the manner  
34 prescribed by the commissioner.

35 (c) The commissioner may promulgate rules and  
36 regulations to require or permit filing periods of any duration,  
37 in lieu of monthly or quarterly filing periods, for any taxpayer  
38 or group thereof.

39 (2) Notwithstanding any of the other provisions of this  
40 section, all transient employers and all employers engaged in any  
41 business which is seasonal shall make return and pay over to the  
42 commissioner on a monthly basis, the full amounts required to be  
43 deducted and withheld from the wages by such employer for the  
44 calendar month. Such returns and payments to the commissioner by  
45 such employers shall be made on or before the fifteenth day of the  
46 month following the month for which such amounts were deducted and  
47 withheld from the wages of his employees. The commissioner shall  
48 have the authority to issue reasonable rules and regulations  
49 designating or classifying said transient and seasonal employers.

50 (3) If the commissioner, in any case, has justifiable reason  
51 to believe that the collection of funds required to be withheld by  
52 any employer as provided herein is in jeopardy, he may require the  
53 employer to file a return and pay such amount required to be  
54 withheld at any time.

55 (4) Every employer who fails to withhold or pay to the  
56 commissioner any sums required by this article to be withheld and  
57 paid, shall be personally and individually liable therefor, except  
58 as provided in Section 27-7-307; and any sum or sums withheld in  
59 accordance with the provisions of this article shall be deemed to  
60 be held in trust for the State of Mississippi and shall be  
61 recorded by the employer in a ledger account so as to clearly



62 indicate the amount of tax withheld and that the amount is the  
63 property of the State of Mississippi.

64 (5) Once an employer has become liable to a quarterly return  
65 of withholding, he must continue to file a quarterly report, even  
66 though no tax has been withheld, until such time as he notifies  
67 the commissioner, in writing, that he no longer has employees or  
68 that he is no longer liable for such quarterly returns.

69 (6) Once an employer has become liable to a monthly return  
70 of withholding, he must continue to file a monthly report, even  
71 though no tax has been withheld until such time as he notifies the  
72 commissioner, in writing, that he no longer has employees or that  
73 he is no longer liable for such monthly returns.

74 (7) Magnetic media reporting may be required in a manner to  
75 be determined by the commissioner.

76 **SECTION 2.** Section 27-55-13, Mississippi Code of 1972, is  
77 amended as follows:

78 27-55-13. Except as otherwise provided in this section, for  
79 the purpose of determining the amount of his liability for the tax  
80 imposed by this article, each bonded distributor of gasoline  
81 shall, not later than the twentieth day of the month next  
82 following the month in which this article becomes effective, and  
83 not later than the twentieth day of each month thereafter, file  
84 with the commission a monthly report which shall include a  
85 statement of the number of gallons of gasoline or blend stock  
86 received by such distributor within this state during the  
87 preceding calendar month, and such other information as may be  
88 reasonably necessary for the proper administration of this  
89 article.

90 At the time of filing each monthly report with the  
91 commission, a distributor may take a credit for the number of  
92 gallons of gasoline that he purchased during the preceding  
93 calendar month from a distributor who pays the excise tax imposed  
94 by this article on such gasoline.



95       Except as otherwise provided in this section, at the time of  
96 filing each monthly report with the commission, each distributor  
97 of gasoline shall pay to the commission the full amount of the  
98 gasoline tax due from such distributor for the preceding calendar  
99 month, less two percent (2%) to cover evaporation, shrinkage and  
100 other normal losses.

101       Reports and payments sent to the commission by mail must be  
102 postmarked by the due date in order to be considered timely filed,  
103 except when the due date falls on a weekend or holiday, in which  
104 case such reports and payments must be postmarked by the first  
105 working day following the due date in order to be considered  
106 timely filed.

107       The monthly report of the distributor of gasoline shall be  
108 prepared and filed with the commission on forms prescribed by the  
109 commission, or the distributor of gasoline may, with the approval  
110 of the commission, furnish the required information on  
111 machine-prepared schedules. Such monthly reports or schedules  
112 shall be signed by the distributor or his duly authorized agent  
113 and shall contain a declaration that the statements contained  
114 therein are true and correct and are made under the penalty of  
115 perjury.

116       Once a distributor of gasoline has accrued liability for  
117 gasoline taxes in excess of Ten Thousand Dollars (\$10,000.00),  
118 such distributor shall, within seventy-two (72) hours, pay to the  
119 commission in the manner prescribed by the commission all amounts  
120 for which he is liable.

121       **SECTION 3.** Section 27-55-523, Mississippi Code of 1972, is  
122 amended as follows:

123       27-55-523. Except as otherwise provided for in this section,  
124 for the purpose of determining the amount of his liability for the  
125 tax imposed by this article, each bonded distributor of special  
126 fuel shall, not later than the twentieth day of the month next  
127 following the month in which this article becomes effective, and



128 not later than the twentieth day of each month thereafter, file  
129 with the commission a monthly report which shall include a  
130 statement of the number of gallons of special fuel received and  
131 sold by such distributor of special fuel within this state during  
132 the preceding calendar month, and such other information as may be  
133 reasonably necessary for the proper administration of this  
134 article.

135 At the time of filing each monthly report with the  
136 commission, a distributor may take a credit for the number of  
137 gallons of special fuel that he purchased during the preceding  
138 calendar month from a distributor who pays the excise tax imposed  
139 by this article on such special fuel.

140 Except as otherwise provided in this section, at the time of  
141 filing each monthly report with the commission, each distributor  
142 of special fuel shall pay to the commission the full amount of the  
143 special fuel tax due from such distributor for the preceding  
144 calendar month.

145 Reports and payments sent to the commission by mail must be  
146 postmarked by the due date in order to be considered timely filed,  
147 except when the due date falls on a weekend or holiday, in which  
148 case such reports and payments must be postmarked by the first  
149 working day following the due date in order to be considered  
150 timely filed.

151 The monthly report of the distributor of special fuel shall  
152 be prepared and filed with the commission on forms prescribed by  
153 the commission, or the distributor of special fuel may, with the  
154 approval of the commission, furnish the required information on  
155 machine-prepared schedules. Such monthly reports or schedules  
156 shall be signed by the distributor or his duly authorized agent  
157 and shall contain a declaration that the statements contained in  
158 such report are true and correct and are made under the penalty of  
159 perjury.



160        Once a distributor has accrued liability for special fuel  
161 taxes in an amount in excess of Ten Thousand Dollars (\$10,000.00),  
162 such distributor shall, within seventy-two (72) hours, pay to the  
163 commission in the manner prescribed by the commission all amounts  
164 for which he is liable.

165        When special fuel, which would otherwise be taxable under the  
166 provisions of this article, is imported, sold, delivered or  
167 exported, under conditions which will exclude such special fuel  
168 from the tax levied under this article by reasons of one or more  
169 of the exemptions provided in this article, deduction for such  
170 exempt special fuel may be taken without prior approval of the  
171 commission on the monthly report of the bonded distributor of  
172 special fuel importing, selling, delivering or exporting such  
173 special fuel. Provided, however, that the commission may require  
174 proof to be furnished of such deduction for exempt special fuel.

175        When the Five and Three-fourths Cents (5.75¢) per gallon tax  
176 has accrued or has been paid on special fuel that is taxed at  
177 Eighteen Cents (18¢) per gallon, a deduction of Five and  
178 Three-fourths Cents (5.75¢) per gallon may be made.

179        **SECTION 4.** Section 27-59-13, Mississippi Code of 1972, is  
180 amended as follows:

181        27-59-13. Except as otherwise provide in this section, the  
182 excise taxes levied in this chapter shall become due and payable  
183 on or before the twentieth day of the month succeeding the month  
184 in which the tax accrues. Each distributor shall file with the  
185 commission a monthly report setting forth the quantity of  
186 compressed gas received within this state, less any authorized  
187 exemptions; the quantity of compressed gas sold for use on the  
188 highways of this state; and any other information as may be  
189 reasonably necessary for the administration of this chapter. The  
190 distributor shall remit to the commission, with the monthly  
191 report, the full amount of the excise tax shown thereon to be due.



192 Reports and payments sent to the commission by mail must be  
193 postmarked by the due date in order to be considered timely filed,  
194 except when the due date falls on a weekend or holiday, in which  
195 case such reports and payments must be postmarked by the first  
196 working day following the due date in order to be considered  
197 timely filed.

198 Once the distributor has accrued liability for excise taxes  
199 in an amount in excess of Ten Thousand Dollars (\$10,000.00), such  
200 distributor shall, within seventy-two (72) hours, pay to the  
201 commission in the manner prescribed by the commission all amounts  
202 for which he is liable.

203 An amount equal to One-fourth Cent (1/4¢) per gallon on all  
204 compressed gas shown to be taxable for highway use may be  
205 deducted; provided, that the One-fourth Cent (1/4¢) per gallon tax  
206 on such compressed gas has been paid or is covered by the bond of  
207 a distributor of compressed gas.

208 The monthly report of the distributor shall be prepared and  
209 filed with the commission on forms prescribed by the commission or  
210 the distributor may, with the approval of the commission, furnish  
211 the required information on machine-prepared schedules. Such  
212 monthly reports shall be signed by the distributor or his duly  
213 authorized agent and contain a declaration that the statements  
214 contained therein are true and are made under the penalty of  
215 perjury.

216 All persons storing compressed gases, excepting natural gas,  
217 in underground caverns or cavities in this state shall make  
218 monthly reports of withdrawals of such compressed gases from  
219 storage, on forms prescribed by the commission at the same time,  
220 in the same manner, and subject to the same terms, conditions and  
221 penalties as is otherwise provided for distributors of compressed  
222 gas. Sales and deliveries of compressed gases to nonpermitted  
223 distributors shall be listed and reported on such reports  
224 separately from sales and deliveries to permitted distributors.



225           **SECTION 5.** Section 27-65-33, Mississippi Code of 1972, is  
226 amended as follows:

227           27-65-33. Except as otherwise provided in this section, the  
228 taxes levied by this chapter shall be due and payable on or before  
229 the twentieth day of the month next succeeding the month in which  
230 the tax accrues, except as otherwise provided. Returns and  
231 payments placed in the mail must be postmarked by the due date in  
232 order to be considered timely filed, except when the due date  
233 falls on a weekend or holiday, returns and payments placed in the  
234 mail must be postmarked by the first working day following the due  
235 date in order to be considered timely filed. The taxpayer shall  
236 make a return showing the gross proceeds of sales or the gross  
237 income of the business, and any and all allowable deductions, or  
238 exempt sales, and compute the tax due for the period covered.

239           As compensation for collecting sales and use taxes, complying  
240 fully with the applicable statutes, filing returns and supplements  
241 thereto and paying all taxes by the twentieth of the month  
242 following the period covered, the taxpayer may discount and retain  
243 two percent (2%) of the liability on each return subject to the  
244 following limitations:

245           (a) The compensation or discount shall not apply to  
246 taxes levied under the provisions of Sections 27-65-19 and  
247 27-65-21, or on charges for ginning cotton under Section 27-65-23.

248           (b) The compensation or discount shall not apply to  
249 taxes collected by a county official or state agency.

250           (c) The compensation or discount shall not exceed Fifty  
251 Dollars (\$50.00) per month, or Six Hundred Dollars (\$600.00) per  
252 calendar year, per business location on each state sales tax  
253 return, or on each use tax return.

254           (d) The compensation or discount shall not apply to any  
255 wholesale tax, the rate of which is equal to or greater than the  
256 tax rate applicable to retail sales of the same property or  
257 service. The retailer of such items shall be entitled to the





258 compensation based on the tax computed on retail sales before  
259 application of the credit for any tax paid to the wholesaler,  
260 jobber, or other person.

261 (e) The compensation or discount allowed and taken for  
262 any filing period may be reassessed and collected when an audit of  
263 a taxpayer's records reveals a tax deficiency for that period.

264 Once the taxpayer has accrued liability for sales taxes in  
265 excess of Ten Thousand Dollars (\$10,000.00), such taxpayer shall,  
266 within seventy-two (72) hours, pay to the commission in the manner  
267 prescribed by the commission all amounts for which he has become  
268 liable.

269 All returns shall be sworn to by the taxpayer, if made by an  
270 individual, or by the president, vice president, secretary or  
271 treasurer of a corporation, or authorized agent, if made on behalf  
272 of a corporation. If made on behalf of a partnership, joint  
273 venture, association, trust, estate, or in any other group or  
274 combination acting as a unit, any individual delegated by such  
275 firm shall swear to the return on behalf of the taxpayer. The  
276 commissioner may prescribe methods by which the taxpayer may swear  
277 to his return.

278 The commissioner may promulgate rules and regulations to  
279 require or permit filing periods of any duration, in lieu of  
280 monthly filing periods, for any taxpayer or group thereof.

281 The commissioner may require the execution and filing by the  
282 taxpayer with the commissioner of a good and solvent bond with  
283 some surety company authorized to do business in Mississippi as  
284 surety thereon in an amount double the aggregate tax liability by  
285 such taxpayer for any previous three (3) months' period within the  
286 last calendar year or estimated three (3) months' tax liability.  
287 Said bond is to be conditioned for the prompt payment of such  
288 taxes as may be due for each such return.

289 The commissioner, for good cause, may grant such reasonable  
290 additional time within which to make any return required under the



291 provisions of this chapter as he may deem proper, but the time for  
292 filing any return shall not be extended beyond the twentieth of  
293 the month next succeeding the regular due date of the return  
294 without the imposition of interest at the rate of one percent (1%)  
295 per month or fractional part of a month from the time the return  
296 was due until the tax is paid.

297         For persistent, willful, or recurring failure to make any  
298 return and pay the tax shown thereby to be due by the time  
299 specified, there shall be added to the amount of tax shown to be  
300 due ten percent (10%) damages, or interest at the rate of one  
301 percent (1%) per month, or both.

302         Any taxpayer may, upon making application therefor, obtain  
303 from the commissioner an extension of time for the payment of  
304 taxes due on credit sales until collections thereon have been  
305 made. When such extension is granted, the taxpayer shall  
306 thereafter include in each monthly or quarterly report all  
307 collections made during the preceding month or quarter, and shall  
308 pay the taxes due thereon at the time of filing such report. Such  
309 permission may be revoked or denied at the discretion of the  
310 commissioner when, in his opinion, a total sales basis will best  
311 reflect the taxable income or expedite examination of the  
312 taxpayer's records.

313         Any taxpayer reporting credit sales before collection thereof  
314 has been made may take credit on subsequent returns or reports for  
315 bad debts actually charged off, if such amounts charged off have  
316 previously been included in taxable gross income or taxable gross  
317 proceeds of sales, as the case may be, and the tax paid thereon.  
318 However, any amounts subsequently collected on accounts that have  
319 been charged off as bad debts shall be included in subsequent  
320 reports and the tax shall be paid thereon.

321         In cases where an extension of time has been granted by the  
322 commissioner for payment of taxes due on credit sales and the  
323 taxpayer thereafter discontinues the business, such taxpayer shall



324 be required to file with the commissioner within ten (10) days, or  
325 such further time as the commissioner may direct, from the date of  
326 the discontinuance of such business, a special report showing the  
327 amounts of any credit sales which have not been included in  
328 determining the measure of the tax previously paid and any other  
329 information with reference to credit sales as the commissioner may  
330 require. The commissioner shall thereupon investigate the facts  
331 with reference to credit sales and the condition of the accounts,  
332 and shall determine, from the best evidence available, the value  
333 of all open accounts, notes, or other evidence of debt arising  
334 from credit sales. The value of all notes, open accounts and  
335 other evidence of debt, as thus determined by the commissioner,  
336 shall be used in determining the amount of the tax for which such  
337 taxpayer shall be liable. When the amount of the tax shall have  
338 been ascertained, the taxpayer shall be required to pay the same  
339 within ten (10) days or such further time as the commissioner may  
340 allow, notwithstanding the fact that such note or accounts may  
341 still remain uncollected.

342       **SECTION 6.** Section 27-67-17, Mississippi Code of 1972, is  
343 amended as follows:

344       27-67-17. Except as otherwise provide in this section, the  
345 commissioner shall collect the tax imposed by this article, and  
346 every person subject to its provisions shall remit to the  
347 commissioner, on or before the twentieth day of each month, the  
348 amount of tax due by such person for the preceding calendar month.  
349 Returns and payments placed in the mail must be postmarked by the  
350 due date in order to be timely filed, except that when the due  
351 date falls on a weekend or holiday, returns and payments placed in  
352 the mail must be postmarked by the first working day following the  
353 due date in order to be considered timely filed. Every taxpayer  
354 shall file a return with his remittance, which return shall be  
355 prescribed by the commissioner and shall show for the calendar  
356 month preceding the tax payment date, the total sale or purchase



357 price, or value of tangible personal property sold, used, stored  
358 or consumed by him for benefit received or service performed, and  
359 such other information as the commissioner may deem pertinent and  
360 necessary for determining the amount of tax due thereunder.

361 The commissioner, in his discretion, may authorize in writing  
362 the filing of returns and the payment of tax on a quarterly basis  
363 by any person required or authorized to pay the tax imposed, such  
364 authority to be subject to revocation for good cause by the  
365 commissioner.

366 In instances where it is impractical to file returns and pay  
367 the tax monthly or quarterly, the commissioner may authorize the  
368 filing of semiannual or annual returns.

369 Once the taxpayer has accrued liability for the tax in excess  
370 of Ten Thousand Dollars (\$10,000.00), such taxpayer shall, within  
371 seventy-two (72) hours, pay to the commissioner in the manner  
372 prescribed by the commissioner, all amounts for which he is  
373 liable.

374 The commissioner, in his discretion, may authorize the  
375 computation of the tax on the basis of a formula in lieu of direct  
376 accounting of specific properties in instances where such method  
377 will expedite, simplify or provide a more equitable means of  
378 determining liability under this article. All formulas shall be  
379 subject to revocation for good cause by the commissioner.

380 **SECTION 7.** This act shall take effect and be in force from  
381 and after July 1, 2002.

